

Internal Revenue Service
memorandum

CC:TL-N-8720-88

Br1:HFRogers

date: **AUG 29 1988**

to: District Counsel, Philadelphia CC:PHI
Attention: Al Cobb

from: Director, Tax Litigation Division CC:TL

subject: Response to Reply Brief Amicus Curiae

This memorandum is written in response to your request for technical advice concerning the Reply Brief filed on behalf of [REDACTED], one of the amici curiae, in the case of [REDACTED].

ISSUE

Whether we should file a responsive pleading to [REDACTED]'s Reply Brief.

CONCLUSION

We believe that it would be desirable for you to request the Tax Court for leave to file a response to the reply brief filed by [REDACTED].

FACTS

Two amici curiae briefs were submitted in the case of [REDACTED]. We filed an answer addressing most of the issues therein.

[REDACTED], one of the amici curiae, requested leave of the court to file a reply brief to that answer. Therein they argue that some of the cases do not support our position. They also allege since no response was made to their Rev. Proc. 84-28 and GCM arguments, their position should prevail.

DISCUSSION

Most of the allegations in [REDACTED]'s Reply Brief are easily addressed and do not require any technical advice. In the event the court may be misled by [REDACTED]'s revenue procedure and GCM arguments, which appeared to be explanatory by their own terms, we believe you should request leave of the court to file a response to [REDACTED]'s reply brief.

In the event you need technical expertise to respond to the allegations regarding the Rev. Proc. 84-28 and the GCM arguments, we are attaching hereto several suggestions. This response may also be an appropriate place, if you have not

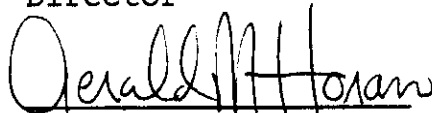
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already done so, to call the court's attention to the case of Saller v. United States, 88-2 U.S.T.C. para. 9416 (E.D. Tex. 1988), wherein the District Court held the Commissioner did not abuse his discretion in disallowing the taxpayers' use of the Rule of 78's method of accounting because the method did not accurately reflect their income.

If you have any question, please contact Helen F. Rogers at FTS 566-3442.

MARLENE GROSS
Director

By:



GERALD M. HORAN
Senior Technician Reviewer
Branch No. 1
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Attachment:

As stated